

194606

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of Carolina Water Service, Inc. for approval of a contract with Palmetto Acquisition and Investment, LLC to serve Marlin Bay Subdivision in York County.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 339 - WS

(Please type or print)

Submitted by: John M. S. Hoefer

Address: Post Office Box 8416
Columbia, SC 29202

SC Bar Number: 2549

Telephone: 803-252-3300

Fax: 803-771-2410

Other:

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☒ Water/Sewer
☐ Administrative Matter
☐ Other:

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input checked="" type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

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AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

August 26, 2008

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RECEIVED
2008 AUG 26 PM 3:56
SC PUBLIC SERVICE
COMMISSION

RE: Application of Carolina Water Service, Inc. for approval of a contract with
Palmetto Acquisition & Investment, LLC to serve Marlin Bay Subdivision in
York County

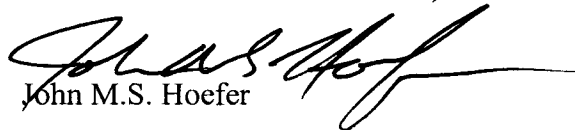
Dear Mr. Terreni:

Enclosed for filing are the original and ten (10) copies of the Application of Carolina Water Service, Inc. in the above-referenced matter. Also enclosed you will find the Applicant's proposed notice of filing. By copy of this letter, I am serving a copy of these documents upon the Executive Director of the Office of Regulatory Staff and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents and Certificate by date-stamping the extra copies that are enclosed and returning them to me via our courier. If you have any questions or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/ccm
Enclosures

cc: Honorable C. Dukes Scott

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2008-____-WS

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SC PUBLIC SERVICE
COMMISSION

IN RE:

)
)
Application of Carolina Water Service,
Inc. for approval of a contract with
Palmetto Acquisition & Investment,
LLC to serve Marlin Bay Subdivision
in York County.
)
_____)

APPLICATION

Carolina Water Service, Inc. ("Applicant" or "Utility") hereby submits a contract between it and Palmetto Acquisition & Development, LLC, ("Developer") for consideration by this Honorable Commission under Vol. 26 S.C. Code Ann. Regs. RR. 103-541 and 103-743 (Supp. 2007). In support of this Application, Applicant would respectfully show as follows:

1. Applicant is a public utility currently authorized to operate water and wastewater systems under the jurisdiction of the Public Service Commission of South Carolina ("Commission") in York County, as well as certain other counties in this state. Its corporate charter is presently on file with the Commission and an appropriate bond has been posted with same. A schedule of the current rates and charges for Applicant's water and wastewater service has previously been approved by the Commission in Docket No. 2004-357-W/S by way of Order No. 2007-135, dated March 1, 2007. Additionally, CWS has implemented rates and charges under bond in accordance with Order No. 2007-230 dated April 5, 2007, issued in Docket No. 2006-92-W/S.¹

¹ As the Commission is aware, the Commission denied Applicant's request for Rate Relief in Docket No. 2006-92-W/S by way of Order No. 2006-543 dated October 2, 2006. Applicant subsequently petitioned the

2. The Applicant seeks approval of an agreement entered into between Applicant and the Developer dated August 11, 2008, ("Agreement"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A." Under Article IV, § 1 of the Agreement, Applicant will provide water and wastewater utility service to the proposed development pursuant to all of the terms, conditions, rates and charges set forth as are on file with this Commission and in effect from time to time.²

3. Pursuant to this agreement, Applicant proposes to serve the "Marlin Bay Subdivision" ("Development") which will consist of approximately eleven (11) single family residential homes, fifty-seven (57) townhouse units, and one (1) recreational/pool area facility when completed. The Agreement provides, *inter alia*, that Developer will construct all of the necessary water distribution and wastewater collection facilities ("Facilities") required to serve the Development, interconnect the facilities with the Utility's existing water and wastewater systems, acquire all necessary easements and rights-of-way ("Easements") and convey such Facilities and Easements to Applicant. Performance of the Agreement is conditioned upon its approval by this Commission.

4. The proposed development is within Applicant's Commission authorized Service Area in York County. Accordingly, no other public utility is authorized to serve the proposed development.

5. Pursuant to Article II, § 15 of the Agreement, Developer has agreed to pay to the Utility water and wastewater service connection and plant impact fees for a minimum of the sixty-eight (68) single family equivalent connections serving the proposed homes and

reconsideration or rehearing of that Order. On November 27, 2006, the Commission issued a directive denying that petition and approving Applicant's request to place rates into effect under bond. On April 5, 2007, the Commission issued its order approving a bond which permitted CWS to place rates into effect as allowed by S.C. Code Ann. Section 58-5-240(D) (Supp. 2005). The Commission issued its Order No. 2007-140 on November 19, 2007, denying CWS's petition for reconsideration or rehearing. CWS and the Office of Regulatory Staff have filed notices of appeal from the Commission's orders in Docket No. 2006-92-WS.

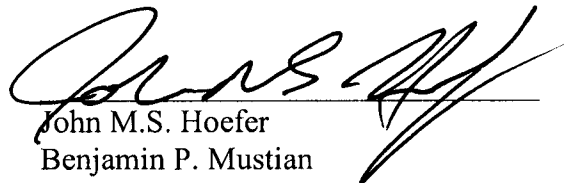
² Thus, upon any subsequent revisions to rates resulting from the appeals taken from Commission orders in Docket No. 2006-92-W/S, the rates to be charged in the proposed development would change.

townhouses, which does not include the pool/recreational area and, pursuant to Article II, § 14 of the Agreement, Applicant has agreed to reserve adequate capacity for up to 68 water and wastewater connections located within the Property. Applicant submits that this provision is warranted and in the public interest as the terms of this contract allow the utility to adequately engage in planning for operations.

6. Applicant submits that the public convenience and necessity will be served by the approval of this Agreement. Applicant further submits that no hearing in this matter is required. See S.C. Code Ann. § 58-5-240(G) (Supp.2007).

7. All correspondence and communications regarding this matter should be sent to the undersigned.

WHEREFORE, having fully set forth its Application, Applicant prays that the Agreement be approved, that a hearing on the within matter be waived or review of the within application be expedited, and that Applicant be granted such other and further relief as the Commission may deem just and proper.



John M.S. Hoefer
Benjamin P. Mustian
WILLOUGHBY & HOEFER, PA
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300

Attorneys for Applicant

Columbia, South Carolina
This 26th day of August, 2008

AGREEMENT FOR WATER AND SEWER SERVICE
MARLIN BAY
YORK COUNTY, SC

This Agreement is entered into this 11th day of August, 2008 by and between Palmetto Acquisition & Investment, LLC, existing under the laws of the State of South Carolina and authorized to do business in South Carolina (hereinafter referred to as "Developer"), and Carolina Water Service, Inc., a Delaware corporation authorized to do business in South Carolina (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS, Developer is the owner of certain real estate parcel containing approximately 25.21 acres (Tax Parcel No 5590000072), and the portions of which are being developed are located at the intersection of Highway 49 and Marlin Drive in Lake Wylie, York County, South Carolina, hereinafter referred to as the "Property" (see "Exhibit 1"); and,

WHEREAS, Developer desires to develop the Property into a residential development with eleven single family residences, fifty-seven townhouse units and one recreational/pool area to be called "Marlin Bay" having an estimated daily water and wastewater usage of 22,080 gpd when completed; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing water and sewer service to the public in its designated River Hills / Lake Wylie Franchised Service Territory located in York County and Property is located within the service territory. The Utility desires to have constructed and installed, and the Developer desires to construct and install, the water distribution and wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement; and,

WHEREAS, Developer desires Utility to provide water and wastewater utility service within the Property and Utility desires to provide water and wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owner(s) of the Property; and,

2. Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer will convey to the Utility or otherwise vest in the Utility such right, title and interest in and to such real estate as may be reasonably necessary to permit the Utility to carry out the terms and conditions of this Agreement; and,
4. Developer will convey to Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may reasonably require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel.

ARTICLE II

Obligations and Construction of Facilities by Developer

1. Facilities
Developer shall construct and install all necessary water distribution and wastewater collection facilities to serve the Property, including but not limited to mains, valves, fire hydrants, service laterals, meter boxes, meters, manholes, odor control devices, lift station(s) with emergency generator(s), and other facilities as are reasonably required to provide adequate water and wastewater service (hereinafter referred to as the "Facilities"). Water distribution mains will have a minimum diameter of six (6) inches, except where otherwise approved by Utility. Developer shall install and connect to the existing twelve (12) inch water main along Highway 49 providing water service to the property at a point to be determined by the Utility. Wastewater collection mains will have a minimum diameter of eight (8) inches, except where otherwise approved by Utility. The sewer collection system, including the proposed lift station, forcemain and gravity sewer mains, shall connect to an existing manhole number seventeen (17) located in the Autumn Cove subdivision at a point as determined by Utility. Developer will make any necessary upgrades to the lift station(s) in Autumn Cove which will be affected by the additional wastewater flows generated by this project.
2. All materials used by the Developer for said Facilities shall be new, first-class, and suitable for the uses made thereof. Developer guarantees all construction, materials, workmanship, and the trouble-free operation of the Facilities (or any portion of the Facilities) for one year after the Facilities (or such portion of the Facilities) are placed in service.
3. All Facilities constructed and installed by Developer pursuant to this Article II shall be

- constructed and installed without cost or expense to Utility.
4. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies which may have jurisdiction thereover, and shall have received the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.
 5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
 6. Developer shall obtain, with cooperation from Utility, all requisite permits and zoning and other approvals and all else required to construct the Facilities, without cost or expense to Utility.
 7. Upon written acceptance of the Facilities by the Utility and interconnection with the Utility's existing water and wastewater systems, all of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed, without cost or expense to Utility, with the exception of the service lines for which each residential unit shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's legal counsel from Developer and from all suppliers, subcontractors and all other who furnish labor, equipment, materials, rentals, or who perform any services in connection with Facilities construction herein. Developer agrees to provide to Utility documentary evidence, in form satisfactory to Utility, sufficient to establish the original cost of the Facilities. Utility shall have, at all times, all right, title and interest in and to the Facilities.
 8. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction thereover, and all applicable connection fees have been paid.

9. All connections must be inspected by the Utility prior to backfilling and covering of any pipes. Written notice to the Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends and official Utility holidays.
10. Should the Developer fail to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
11. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, without cost or expense to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
12. Developer shall, prior to the transfer to Utility of the Facilities, provide to Utility as-built drawings, and all other information (by both hard copy and electronic copy), reasonably required to operate, maintain, and repair the Facilities.
13. Developer shall submit to Utility upon execution of this Agreement a Plan Review Fee of one thousand dollars (\$1,000) for each phase of the development. Developer shall, prior to the final acceptance of each development phase, or portions thereof, submit to Utility a five hundred dollar (\$500) Inspection Fee. Should the Facilities require additional inspection(s) due to improper installation, defective or unapproved materials, the Developer shall pay five hundred dollars (\$500) for each additional inspection required.
14. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for up to sixty-eight (68) water and wastewater connections located within the Property.
15. Developer shall pay and deliver to Utility the sum of money which is the non-recurring service connection and plant impact fees ("Tap Fees") provided for under Utility's rate schedule, as may be approved by the Public Service Commission of South Carolina and in effect from time to time, multiplied by the Single Family Equivalent ("SFE") rating set forth therein. For the project which is the subject of this Agreement, that sum shall be \$95,200.00 which is based upon an estimated five (68) SFEs (not including the proposed recreational/pool area) and the Utility's current rate schedule. This payment shall be made within ten (10) days of the issuance of a Permit to Construct for the necessary water and wastewater infrastructure from the South Carolina Department of Health and Environmental Control, or within sixty (60) days of the execution of this Agreement, whichever occurs first. Should it be determined that the project contemplated by this Agreement consists of a greater number of SFEs than is estimated hereinabove, then and

in that event Developer shall be required to pay an additional sum to Utility for each additional SFE using the calculation provided for hereinabove conditioned upon first receiving the approval from Utility for such increase in SFEs. In addition, Developer agrees that it will not represent to any third party that utility service is available from Utility for use within the proposed development except (1) upon Developer's payment of the Tap Fees as provided hereinabove, and (2) establishment of service and an account between said third party and Utility, including payment of all fees and charges authorized under the Utility's approved rate schedule excepting tap fees.

ARTICLE III

Other

1. Developer will not, and will not permit by restricted land covenant, any owner of real estate within the Property to construct or maintain any private well or septic system within the Property.
2. Neither Developer nor any entity or individual affiliated with Developer has executed or will execute any agreement with any lot purchaser in the Property, or any other parties or made any representations to any such purchasers or other parties whereunder such purchaser or other parties have acquired any interest in Facilities to be installed under this Agreement.

ARTICLE IV

Utility Services, Connection Fees, Rates and Charges

1. Prior to the commencement of utility service, lot owners within the Property are responsible for the payment to Utility of all applicable water and sewer fees, as well as the appropriate York County water and sewer tap-on or service fees at the rate as in effect from time to time prior to the provision of utility service to any lot within the Property. Such fees, usage and all other incidental rates and charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service on file with the South Carolina Public Service Commission (the "Commission") from time to time and then in effect. Capacity shall not be reserved for any lot, out parcel, commercial space or building for which the tap fee has not been paid.
2. Upon installation and acceptance of the Facilities and payment of all applicable connection fees, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service and to operate, maintain and repair all

Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all regulatory authorities.

ARTICLE V

Commission Approval

1. Within thirty (30) days following the execution of this Agreement, Utility will file an application with the Commission requesting approval of this Agreement, if necessary. Developer agrees to cooperate with Utility in any proceeding resulting from such application and to reimburse Utility its reasonable attorney fees, costs and litigation expenses incurred for such filing, and in addition, in the event such application is litigated by the Office of Regulatory Staff or opposed by third parties. All terms and conditions contained herein are subject to Utility receiving said approvals from the Commission.

ARTICLE VI

General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
2. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
3. The representations, warranties and agreements contained herein shall survive, and continue in effect. Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation,

warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.

4. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
5. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

Carolina Water Service, Inc.
2335 Sanders Road
Northbrook, Illinois 60062
Attn: Ms. Lisa Sparrow
Chief Operating Officer

If to Developer:

Palmetto Acquisition & Investment, LLC
PO Box 4716
Rock Hill, SC 29731
Attn: Mr. Mike Scott

Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.

6. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. This Agreement shall be governed by the laws of the State of South Carolina.
8. If this Agreement is not executed prior to August 15, 2008, then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

[Signatures Begin on the Following Page]

IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

Carolina Water Service, Inc.

By: [Signature]
Its: VICE PRESIDENT

Attest/Witness:

1) Ronnie Stanis, Ronnie Stanis

(Print name and title, seal if applicable)

2) MARTIN LASHUA, Regional Director

(Print name)

[Signature]

Palmetto Acquisition & Investment, LLC

By: [Signature]
Its: Member

Attest/Witness:

1) Joseph Hammond (Project Manager)

(Print name and title, seal if applicable)

2) DERICK BOYD

(Print name/ Signature)

STATE OF South Carolina)

COUNTY OF York)

Probate

PERSONALLY appeared before me the undersigned witness and made oath that he saw the within named Mike Scott, as Member of Palmetto Acquisition & Investment sign, seal and as its act and deed, deliver the within written agreement for the uses and purposes therein mentioned, and that s/he with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this

28th day of July, 2008.

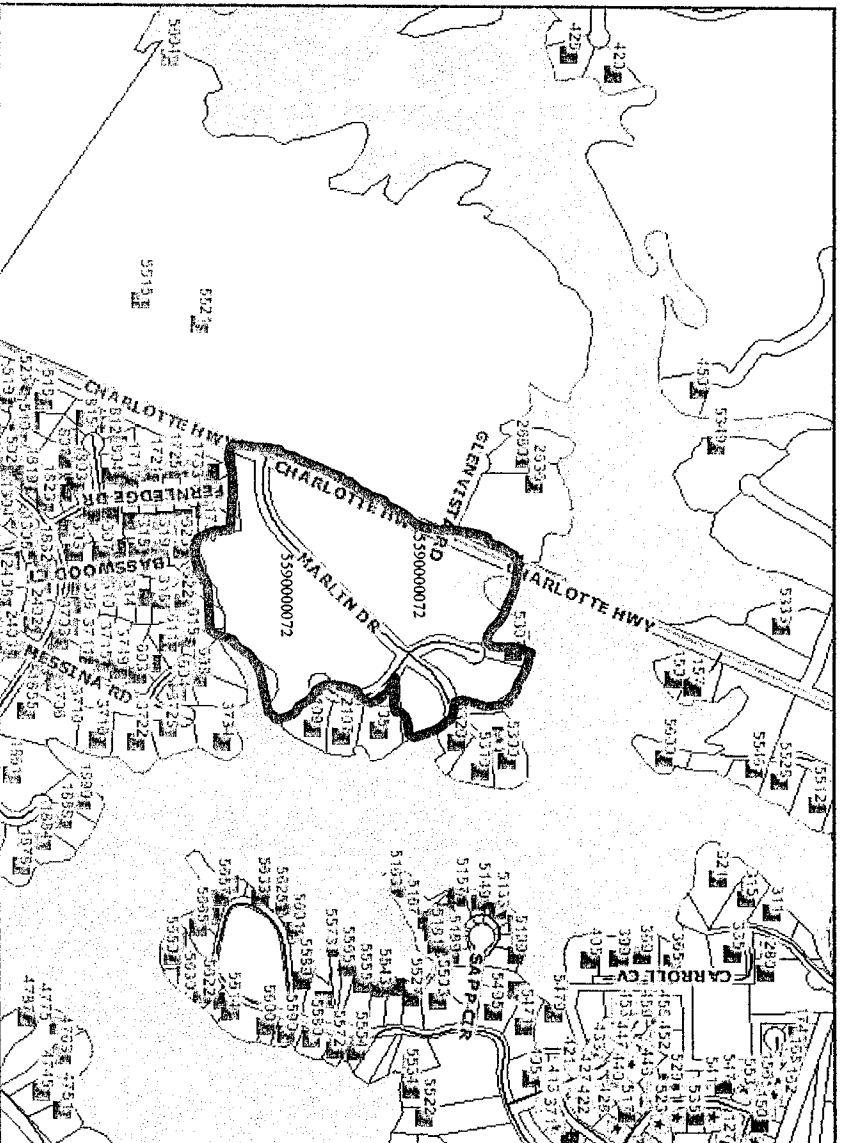
[Signature]
Witness

Sherrie L. Hilaman
Notary Public for South Carolina

My Commission Expires: 2-23-09

[seal]

Exhibit I



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2008-____-WS

RECEIVED
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SC PUBLIC SERVICE
COMMISSION

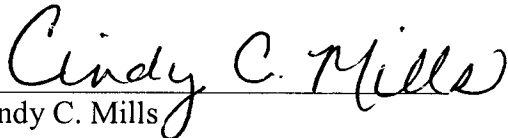
IN RE:

Application of Carolina Water Service,
Inc. for approval of a contract with
Palmetto Acquisition & Investment,
LLC to serve Marlin Bay Subdivision
in York County.

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the Application in the above-captioned matter by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Honorable C. Dukes Scott
Executive Director
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211


Cindy C. Mills

Columbia, South Carolina
This 26th day of August, 2008.